United Nations CED/C/JPN/Q/1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
22 June 2018

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

List of issues in relation to the report submitted by Japan under article 29 (1) of the Convention*

I. General information

1. Please provide information about the report preparation process, in particular whether it benefited from broad-based, meaningful consultations, including with organizations of the families of victims, human rights defenders working on the issue of enforced disappearance and non-governmental organizations.

2. Please indicate which concrete steps the State party intends to take in order to make the declaration under article 31 of the Convention, which refers to the competence of the Committee to receive and examine individual communications, as indicated in paragraph 165 of the State party's report (CED/C/JPN/1).

3. Please provide information about progress made to establish a national human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

4. Please indicate whether national courts or administrative authorities can directly apply the provisions of the Convention. Please provide examples, if any exist, of jurisprudence in which the provisions of the Convention have been invoked.

5. Please provide updated statistical data, disaggregated by sex, age and nationality, on the number of disappeared persons under the control of the State party, indicating the number of cases that would constitute enforced disappearance, that is, criminal conduct that comprises all three constitutive elements of an enforced disappearance as defined in article 2 of the Convention. In this respect, please also indicate the number of so-called comfort women that are still disappeared, disaggregated by nationality, and clarify whether any complaints of enforced disappearance have been submitted to the State party in this regard (arts. 1, 2 and 12).

II. Definition and criminalization of enforced disappearance (arts. 1–7)

6. With regard to paragraphs 14 and 15 of the State party's report, please describe the existing legal and administrative measures to guarantee that no derogation to the right not to be subjected to enforced disappearance is made during a state of war, a threat of war, internal political instability or any other public emergency. Please provide information on measures taken to ensure that any amendments to regulations governing states of

* Adopted by the Committee at its fourteenth session (22 May–1 June 2018).

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emergency currently discussed in the context of draft constitutional proposals are compatible with article 1 of the Convention (art. 1).

7. Please provide information on whether the State party intends to adopt a definition of enforced disappearance as an autonomous crime that comprises all three constitutive elements of the crime in line with article 2 of the Convention. In relation to paragraphs 16, 17, 20 and 22 of the State party's report, and in the absence of an autonomous crime of enforced disappearance, please provide additional information on the provisions invoked in national legislation to deal with cases of enforced disappearance as defined in article 2 of the Convention (arts. 2–4 and 12).

8. Please specify how refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person would be punished under domestic legislation. Please indicate the maximum and minimum penalties provided for in the Penal Code for crimes that could be invoked to deal with cases of enforced disappearance and provide information on the mitigating or aggravating circumstances that may be applied, indicating the maximum and minimum penalties, when these apply (art. 7).

9. Please indicate whether any complaints have been lodged regarding acts defined in article 2 of the Convention that were carried out by persons or groups of persons acting without the authorization, support or acquiescence of the State. If so, please provide disaggregated data on the investigations carried out and their results, including the ratio of procedures initiated to convictions, as well as on the sanctions imposed on those responsible (arts. 3 and 12).

10. In reference to paragraphs 21 and 22 of the State party's report, please indicate whether the widespread or systematic practice of enforced disappearance is codified in national legislation as a crime against humanity. If this is the case, please provide information on the consequences of it provided for under domestic law, including the maximum and minimum penalties, and on the imprescriptibility of the offence. Please explain how the widespread and systematic practice of enforced disappearance is taken into account unfavourably in the assessment of the penalty in national legislation (arts. 5, 7 and 8).

11. In reference to the information provided in paragraph 23 of the State party's report, please explain how articles 60–62 of the Penal Code address all acts specified in article 6 (1) (a) of the Convention and indicate whether any steps have been taken to expressly incorporate into national law the criminal responsibility of superiors as set out in article 6 (1) (b) of the Convention. Please provide information on whether national legislation prohibits invoking orders of a superior, including orders from military authorities, as a justification for enforced disappearance, and whether the notion of "due obedience" as a criminal law defence has any impact on the effective implementation of this prohibition. Please indicate whether national legislation guarantees that persons who refuse to obey orders or instructions that prescribe, authorize or encourage enforced disappearance will not be punished and provide information on any remedies available to subordinates against any potential disciplinary measures resulting from their refusal to carry out a criminal act ordered by a superior (arts. 6 and 23).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

12. In relation to paragraph 25 of the State party's report, please provide additional information on the statute of limitations applicable to the crime of enforced disappearance and explain how a statute of limitations of between 3 and 10 years, as provided for in the relevant articles of the State party's Penal Code, would be proportionate to the extreme seriousness of the crime and compliant with article 8 (1) (a) of the Convention. In relation to paragraph 28 of the report, please explain how the State party guarantees that no statute of limitations applies to criminal, civil or administrative actions brought by victims of enforced disappearance seeking the right to an effective remedy, and provide any examples that may exist (art. 8).

13. In reference to the information provided in paragraphs 29, 30 and 34–36 of the State party's report, please explain how national legislation ensures the competence of the State party to exercise jurisdiction over the crime of enforced disappearance in the cases contemplated under article 9 (1) (b) and (c), and provide examples of cases in which those paragraphs were applied. Please also clarify the legal framework to establish jurisdiction in the cases contemplated under article 9 (2), including in the absence of a treaty. Please provide information on the standards of evidence applied by the authorities for prosecution and conviction in cases referred to in article 9 (2) and the measures to ensure that these apply equally to cases referred to in article 9 (1), including when the alleged offender is a national of the State or a foreigner who committed acts of enforced disappearance abroad. Please indicate whether military authorities are competent under domestic law to investigate and/or prosecute persons accused of enforced disappearance and, if so, please provide information about applicable legislation (arts. 9 and 11).

14. In reference to the information provided in paragraphs 31–33 of the State party's report, please:

(a) Clarify the procedures that exist to ensure the presence of an alleged offender before the authorities if the alleged offender refuses the authorities' request to appear in their offices;

(b) Provide information about the existing legal, administrative or judicial measures to carry out a preliminary inquiry or investigation to establish the facts, should the State party have taken the measures referred to in article 10 (1) of the Convention;

(c) Provide information about the domestic legal measures to notify other States that might also have jurisdiction over the person in custody of the detention of the alleged offender, the circumstances of the detention and whether it intends to exercise jurisdiction (art. 10).

15. In relation to paragraph 38 of the State party's report, please explain how article 6 of the rules on activities to locate missing persons is in line with article 12 (1) of the Convention, which affirms the right of any individual to report an alleged enforced disappearance to the competent authorities, irrespective of his or her relationship to the disappeared person. Please indicate whether the authorities responsible for investigating cases of alleged enforced disappearance are specifically trained to start and conduct investigations into these cases and provide information on: (a) the budget and human resources at their disposal; (b) whether they are subject to any limitations that may restrict their access to places of detention where there are grounds to believe that a disappeared person may be present; and (c) whether they have access to all the documentation and other information relevant to their investigation, including when it is official, confidential information and in cases where such information may harm national interests (art. 12).

16. In reference to the information provided in paragraphs 38–43 of the State party's report, please provide additional information on all the measures in place to ensure a prompt, effective and impartial investigation into alleged cases of enforced disappearance, including in the absence of an official complaint. Please indicate whether there are any mechanisms in place to exclude a law enforcement or security force, whether civilian or military, from the investigation into an enforced disappearance when one or more of its members are accused of having been involved in the commission of the offence. Please provide information on the appeal mechanisms available to the complainant if the competent authorities refuse to investigate his or her case and on the mechanisms available to ensure the protection from any ill-treatment, intimidation or sanction of the complainants, their representatives, witnesses and other persons participating in the investigation, prosecution and trial or who request information concerning a person deprived of liberty (arts. 12, 18, 20 and 22).

17. Please provide information on the number of cases of enforced disappearance that have been prosecuted, disaggregated by the type of crime applied to prosecute them, age, sex and nationality, the investigations carried out and their results, including whether the fate and/or whereabouts of the victim have been ascertained, the sanctions imposed on those responsible and the reparations, including rehabilitation, granted to victims (arts. 1–2, 12 and 24).

18. In reference to paragraphs 46 and 47 of the State party's report, please provide additional information on the treaties and any other legal provisions concerning mutual legal assistance, including with States not party to the Convention, and provide examples of cases involving the offence of enforced disappearance in which mutual legal assistance was requested by or from Japan, including the result of the request. Please also indicate whether there are any limitations or conditions in national legislation that could be applied in relation to requests for mutual assistance or cooperation under the terms established by articles 14 and 15 of the Convention (arts. 14–15).

IV. Measures to prevent enforced disappearances (arts. 16–23)

19. In relation to expulsion, return, surrender or extradition of a person, and in reference to the information provided in paragraphs 48–56 of the State party's report:

(a) Please clarify how, in the absence of an autonomous crime of enforced disappearance, national legislation makes enforced disappearance an extraditable offence in all treaties with all States and provide information on all the extradition treaties between Japan and other States parties to the Convention that explicitly include enforced disappearance as an extraditable offence. When no extradition treaty exists, please explain how the Convention is used as the basis for extradition, including in cases when there is no guarantee that the requesting State would grant a request from Japan. Please provide examples of cases where the State party granted extradition and examples of cases when extradition was denied for cases of enforced disappearance (art. 13);

(b) Please provide additional information about the authority that determines the expulsion, return, surrender or extradition of a person and about the mechanisms and criteria applied before carrying out any of these procedures to evaluate and verify the risk of a person being subjected to enforced disappearance or other forms of serious harm to life and personal integrity. Please indicate whether the State party accepts diplomatic assurances when there is reason to believe that there is a risk that the person may be subjected to enforced disappearance (arts. 13 and 16);

(c) Please provide information on whether the State party plans to eliminate any obstacles to extradition that exist in national legislation, in extradition treaties or in agreements with third countries with respect to the crime of enforced disappearance. Please indicate the measures in place to ensure that a request for extradition in cases of enforced disappearance will not be refused on the basis of regarding enforced disappearance as a political offence, as an offence connected with a political offence or as an offence inspired by political motives (arts. 13–14);

(d) Please provide, in reference to paragraph 56 of the report, additional information on the training that officers dealing with the expulsion, return or extradition of foreigners receive with regard to human rights and enforced disappearances (arts. 16 and 23).

20. With regard to detention and access to places of deprivation of liberty:

(a) Please provide information on the prohibition in national legislation of secret detention and clarify which places are considered places of deprivation of liberty in the State party (art. 17);

(b) In reference to the information provided in paragraphs 61, 64, 69, 80, 81 and 92 of the State party's report, please provide additional information on the relevant national legislation that would guarantee the right of all persons deprived of liberty, from the very outset of the deprivation of liberty and regardless of the place of deprivation of liberty, to communicate and be visited by their counsel, family or any other person of their choice, that would guarantee that these persons are informed of the deprivation of liberty and of the place where the person is being held and that, in the case of foreigners, would guarantee that they can communicate with their consular authorities. Please provide information on any conditions or restrictions that may apply to these rights and their compatibility with article 17 (2) (d). In this respect, please also indicate whether there are any time limits for a person deprived of liberty to meet with his or her counsel after his or her deprivation of

liberty, including any time limit on the duration of this meeting. Please indicate whether there have been complaints or allegations regarding failures to observe these rights and, if so, please provide information about the proceedings carried out and their outcome, including sanctions imposed (art. 17);

(c) Please provide information on the applicable legislation to guarantee, in a suspected enforced disappearance, that any person with a legitimate interest, including those other than the person deprived of liberty and his or her counsel, can bring proceedings before a court in order to decide on the lawfulness of detention, irrespective of the place of deprivation of liberty, including medical institutions and immigration detention facilities. Please provide information on the sanctions provided for in national legislation for delaying or obstructing this right (arts. 17 and 22);

(d) Please clarify whether any of the registers and records mentioned in paragraphs 75–78 of the report contain information on all persons deprived of liberty in all places of deprivation of liberty, including in medical institutions, women's guidance homes and immigration detention centres, and indicate whether they contain all the information listed in article 17 (3) of the Convention. Please also provide information on the relevant legislation concerning the information that the registers and/or records of persons deprived of liberty must contain. In addition, please provide information on measures taken to ensure that all records of persons deprived of liberty are completed, updated immediately and monitored (art. 17);

(e) Please provide additional information on the relevant articles of the legislation mentioned in paragraphs 66, 71–74 and 94–95 of the report with regard to the inspection of places of deprivation of liberty and provide information on any other independent bodies or administrative mechanisms that exist for the inspection of all places of deprivation of liberty, including on-the-spot inspections to immigration facilities. Please clarify the roles and responsibilities of the authorities responsible for the mechanisms mentioned in paragraphs 71, 73 and 94 of the report in carrying out on-the-spot inspections and those of the boards and committees mentioned in paragraphs 66, 72, 74 and 94 of the report, and provide additional information on the processes to implement recommendations made by all relevant authorities. Please also provide information on the measures in place to guarantee the independence of those mechanisms and to guarantee the unrestricted access of their representatives to all places of deprivation of liberty. Please provide information on the training that personnel in charge of inspecting places of deprivation of liberty receive for this purpose and on the number of inspections carried out per year to each place of deprivation of liberty (arts. 17 and 23);

(f) In reference to the information provided in paragraphs 118, 120–122, 124 and 125 of the report, please provide additional information on legislation and practice that ensure the verification of the release of persons deprived of liberty in all places of deprivation of liberty, as well as information on the authorities in charge of monitoring the release (arts. 17 and 21);

(g) In reference to the information provided in paragraphs 127–131 of the report, please provide additional information on the legislation mentioned and clarify how it fully addresses the conduct described in article 22 (b) and (c) of the Convention. In particular, please explain how articles 156 and 193 of the Penal Code address the failure to record a deprivation of liberty, the refusal to provide information and the provision of inaccurate information (art. 22).

21. In reference to paragraphs 96–99 and 108–113 of the State party's report, please provide additional information on the measures taken to guarantee the right of any person with a legitimate interest to access all information listed in article 18 (1) of the Convention, other than the disclosure of the grounds for detention, regardless of the place of deprivation of liberty, and the measures in place to prevent and impose sanctions on delaying or obstructing an effective judicial remedy to obtain such information. Please provide information on the legislation and on the contents of the "retained personal information" referred to in paragraph 98 of the report and indicate whether that information contains all the elements of article 18 (1) of the Convention. In reference to the information in paragraphs 110 and 111 of the report, please provide additional information on the means

of appeal against the refusal to disclose such information, including the relevant articles of the applicable legislation, the authorities to whom the appeal is directed and the deadlines to present an appeal. Please also provide information on any restrictions that may exist in national legislation on the exercise of this right, including those mentioned in paragraph 109 of the report and the laws and regulations mentioned in paragraph 99, when responding to a request. In this respect, please indicate whether the State party has taken any steps to suppress these restrictions (arts. 18, 20 and 22).

22. Concerning paragraphs 102–107, 147 and 148 of the State party's report, please provide additional information on the national legislation and procedures to obtain, process, use and store personal information, including medical and genetic data, of the disappeared person and his or her relatives for the purpose of identifying any remains in the case of death or for the search of the disappeared person. Please also clarify whether a database of genetic data exists for this purpose. Please provide information on any mechanisms in place to locate victims or, in the case of death, locate, respect and return their mortal remains to relatives (arts. 19 and 24).

23. In reference to the information provided in paragraphs 132–139 of the State party's report, please provide further information on the content and frequency of the training referred to in those paragraphs and on the number of officials trained. Please also provide information on whether the State party provides, or plans to provide, specific training on the Convention, along the lines set out in article 23 thereof, to all law enforcement personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges and other officials responsible for the administration of justice (art. 23).

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)

24. Please indicate how the definition of "victim" in national legislation as the victim or, if the victim has died or suffers from a serious mental or physical disorder, his or her spouse, lineal relatives or siblings conforms with the much broader definition of victim as anyone who has suffered harm as the direct result of an enforced disappearance contained in article 24 (1) of the Convention. Please clarify whether a victim of enforced disappearance is obliged to initiate criminal proceedings to be considered a victim. In relation to paragraphs 142, 143 and 149 of the State party's report, please clarify the legislation applicable to the provision of compensation and reparation to victims of enforced disappearance as defined in article 2 of the Convention. Please provide information on the type of compensation and reparation awarded by the State to victims of enforced disappearance, including in cases where death has not occurred, and explain in detail the procedures in place to obtain them, including their approximate timeline, indicating also whether access to compensation and reparation depends on the existence of a criminal sentence. Please also provide information on the existence of or steps undertaken to establish mechanisms to ensure the right to know the truth of the circumstances of the enforced disappearance and the fate of the disappeared person and on how those mechanisms ensure the right of victims to be informed of the progress and results of investigations and participate in their proceedings (art. 24).

25. Concerning paragraphs 144 and 146 of the State party's report, please indicate if it is necessary that the whereabouts of a person be unknown for one or seven years, depending on the circumstances, to declare a person as disappeared or whether those periods may be shorter, and please clarify the time that needs to have elapsed after a declaration of absence has been issued for the disappeared person to be considered dead. Please provide information on the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, before and after a declaration of absence or death has been issued, in fields such as social welfare, financial matters, family law and property rights. Please indicate whether the recognition of a person as disappeared or the declaration of death may have an impact on the State party's obligation to continue the investigation into an enforced disappearance until the fate of the disappeared person has been clarified. Please provide information on existing legislation and administrative procedures that guarantee the rights

of victims to form and participate in associations concerned with enforced disappearances (art. 24).

26. In reference to paragraph 150 of the State party's report, please indicate the relevant provisions of the Penal Code applicable to acts covered by article 25 (a) of the Convention and specify the maximum and minimum penalties provided for such acts and for those under article 25 (b) of the Convention. Please provide statistical data on such cases, including the penalties imposed, disaggregated by sex, age and nationality. In relation to paragraph 152 of the report, please provide additional information on the existing mechanisms and relevant legal provisions applicable to the search for and identification of disappeared children, the authorities responsible and the procedures available to return them to their families of origin, including the existence of DNA databases. In reference to paragraph 154, please provide additional information on the procedures in place to review and, if necessary, annul the adoption of children that originated in an act of enforced disappearance and to guarantee the right of disappeared children to have their true identity re-established. Please indicate whether there is any time limit for annulling an adoption or placement of a child that originated in an act of enforced disappearance (art. 25).